

FILED

June 4 2008

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

PR 06-0120

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JUN 4 2008

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

LAURA HOLTZ,

Plaintiff,

v.

ORDER

GEORGE C. LUTHER, NANCY E. LUTHER,
CORY LUTHER, and WILLIAM MURI, d/b/a
WILLIAM MURI REAL ESTATE,

Defendants.

Laura Holtz, Plaintiff in Cause Number DV-05-52 Rosebud County, has filed a motion to disqualify presiding judge, Honorable Joe L. Hegel.

In her affidavit for disqualification, Holtz cites to the facts that Judge Hegel granted grandparent visitation rights to George and Nancy Luther, the defendants in the underlying suit. The ruling on grandparent visitation was apparently issued over four years ago and has nothing to do with the present litigation other than it involved the Luthers.

Holtz further avers that Judge Hegel has refused to acknowledge the Luther's reputation in the community. She does not explain how it is that Judge Hegel has refused to recognize the Luther's reputation or why it is that it would be incumbent upon him to do so.

Holtz further states that she intends to call a witness who would testify that Corey Luther, one of the defendants, has displayed a pattern of abuse against women. Holtz concedes that Corey Luther has not abused or beaten her and does not explain how a pattern of abuse against other women is relevant to the underlying suit. Nonetheless, she anticipates that Judge Hegel will block any abuse testimony Holtz might present.

Finally, Holtz, while purporting not to rely on rulings by Judge Hegel which can be addressed on appeal, goes on for four pages to discuss court rulings to which she takes exception.

Section 3-1-805, MCA (Disqualification for Cause) provides in pertinent part that whenever a party shall file an affidavit "alleging facts showing personal bias or prejudice of the presiding judge," the Chief Justice of this Court shall assign a district judge to hear the disqualification proceeding. Section 3-1-805, MCA, also provides that an affidavit which does not "allege facts showing personal bias or prejudice may be set aside as void."

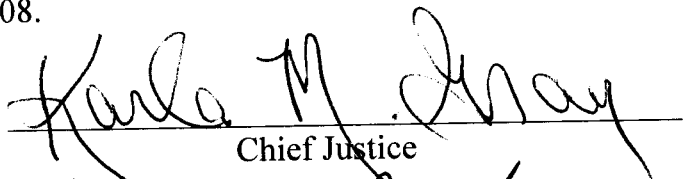
Having reviewed the affidavit which focuses on rulings in other law suits; anticipated rulings, reputation of the defendants, abuse of non-parties and rulings by Judge Hegel, we conclude that Holtz has not alleged "facts showing personal bias or prejudice of the presiding judge" as required by § 3-1-805, MCA.

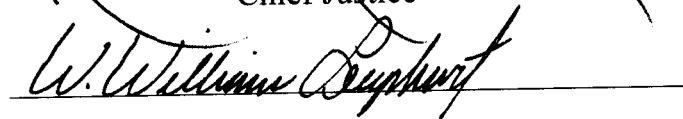
Accordingly,

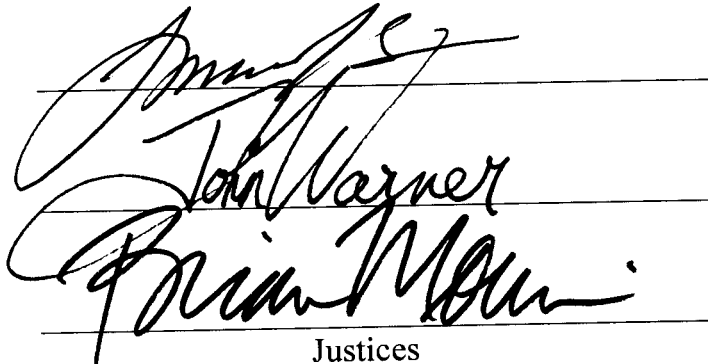
IT IS HEREBY ORDERED THAT:

1. Holtz's motion to disqualify Judge Hegel is set aside as void.
2. The Clerk is directed to mail a true copy hereof to Laura Holtz at her last known address.

DATED this 4th day of June, 2008.


Chief Justice




Justices